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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,089	06/27/2006	Thomas McGee	102790-159 (30100 US/2)	4313
27389 7590 10/12/2010 PARFOMAK, ANDREW N. NORRIS MCLAUGHLIN & MARCUS PA 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022				
EXAMINER CLEVELAND, TIMOTHY C				
ART UNIT		PAPER NUMBER		
1774				
MAIL DATE		DELIVERY MODE		
10/12/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/577,089

Applicant(s)

MCGEE ET AL.

Examiner

Timothy Cleveland

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date 4/25/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

Claim Interpretation

2. The transitional phrase of claim 1, "characterised in that", is interpreted to be an open-ended transitional phrase.

Claim Objections

3. Claim 1 is objected to because of the following informalities:
- Line 4- "liquid **have** a molecular weight" (emphasis added) should be replaced with -- liquid **has** a molecular weight--.
 - Line 7- "is of plastics material" should be replaced with --is of a plastics material--.

Appropriate correction is required.

4. Claim 9 is objected to because of the following informalities: In line 3- "it **have** a molecular weight" (emphasis added) should be replaced with -- it **has** a molecular weight--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 1 recites the limitation "the volatile liquid" in line 4. There is insufficient antecedent basis for this limitation in the claim. For the purpose of the prior art rejection below, the limitation has been interpreted as "a volatile liquid".

8. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the method claims no steps to disseminate a volatile liquid.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by He et al. (WO 02/30220).

11. In regards to claims 1-8, He et al. discloses a transfer member (porous wick 102) in contact with a reservoir (104) that is capable of passing the contents of the reservoir into the environment via capillary forces. The wick is taught to be made from plastic materials, such as high density polyethylene or polytetrafluoroethylene, which are known to have low surface energies and coefficients of friction. See Figure 1; page 5, lines 1-26 and page 9, lines 1-8. The applicant has listed high density polyethylene in the specification as an appropriate material for the transfer member (see the table on page 10 in the Applicant's specification). Therefore, when the structure recited in the reference is substantially identical to that of the claims, claimed properties or functions are presumed to be inherent. The Courts have held that it is well settled that where there is a reason to believe that a functional characteristic would be inherent in the prior art, the burden of proof then shifts to the applicant to provide objective evidence to the contrary. See *In re Schreiber*, 128 F.3d at 1478, 44 USPQ2d at 1478, 44 USPQ2d at 1432 (Fed. Cir. 1997) (see MPEP § 2112.01, I.). The limitations regarding the volatile liquid do not further limit the apparatus claims. "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[I]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." See *In re Young*, 75 F.2d 996<

25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)) (see MPEP § 2115).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Purzycki (US 4,913,350) in view of He et al. (WO 02/30220) with teaching of inherent properties from Dimetol® fact sheet.

15. In regards to claim 9, Purzycki discloses a method of dissemination a volatile liquid into an atmosphere by evaporation from a plastic transfer member (external capillary member; see Figure 5 and col. 4, line 58 to col. 5, line 7) having surface capillary channels. The volatile liquid (common materials listed in Table 5 in col. 13, where almost all have a surface tension of less than 40) has at least 30% having a

molecular weight of 175 maximum and surface tension of less than 40 dynes/cm (col. 12, lines 43-64). The composition would be the 1:1 molar solution of limonene (molecular weight of 136 and a surface tension of 29.8 dynes/cm) and Dimetol® (molecular weight of 144 and a surface tension of 26.4 dynes/cm; see Dimetol® fact sheet) (see col. 10, lines 37-40)

16. Purzycki does not explicitly teach that the transfer member has a surface energy of less than 45 dyne/cm.

17. In the analogous art of vaporizers, He et al. discloses a transfer member (porous wick 102) in contact with a reservoir (104) that is capable of passing the contents of the reservoir into the environment via capillary forces. The wick is taught to be made from plastic materials, such as high density polyethylene or polytetrafluoroethylene, which are known to have low surface energies and coefficients of friction. See Figure 1; page 5, lines 1-26 and page 9, lines 1-8. The applicant has listed high density polyethylene in the specification as an appropriate material for the transfer member (see the table on page 10 in the Applicant's specification). Therefore, when the structure recited in the reference is substantially identical to that of the claims, claimed properties or functions are presumed to be inherent. The Courts have held that it is well settled that where there is a reason to believe that a functional characteristic would be inherent in the prior art, the burden of proof then shifts to the applicant to provide objective evidence to the contrary. See *In re Schreiber*, 128 F.3d at 1478, 44 USPQ2d at 1478, 44 USPQ2d at 1432 (Fed. Cir. 1997) (see MPEP § 2112.01, I.).

18. It would have been obvious for one of ordinary skill in the art at the time of the invention to have combined the use of the wick of He et al. with the method of Purzycki for the purpose of effectively evaporating fragrances into the environment.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Cleveland whose telephone number is (571)270-5041. The examiner can normally be reached on Monday-Thursday 7:30-5 EST alt Friday 8:30-4 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on (571)272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy Cleveland/

/Walter D. Griffin/
Supervisory Patent Examiner, Art Unit 1774